

Consistent with its strategy of delay and confusion, but entirely inconsistent with its own affirmative request for relief, CNA seeks to block Caliber's request for a Rule 16 Management Conference. CNA cannot have it both ways. CNA must either allow the Court to address the venue motion or withdraw it. Regardless, Caliber has a right to know if this case will proceed in this Court. The Court should reject CNA's opposition to a Management Conference for at least three reasons.

First, Caliber is contractually entitled to reimbursement of its legal fees and costs in the Underlying Action. CNA does not dispute this. Indeed, CNA even proposed mediation to settle its obligations to Caliber. As CNA presented no credible reason why Caliber should compromise the amounts due to it, mediation at this time would not be productive.

Second, there is no risk of double recovery by Caliber. Caliber has been transparent with all indemnitors, including CNA, about the amounts incurred in defending the Underlying Action. Any amounts recovered from other insurers or third parties will only *reduce* what CNA owes Caliber. This is especially true here, where Caliber must prove its damages once liability is established. *Phillips v. Carlton Energy Grp., LLC*, 475 S.W.3d 265, 278–80 (Tex. 2015) (parties must prove damages so courts can discern the extent of the losses caused by the breach). But in no case do the indemnification duties of others alter or extinguish the independent contractual duties that CNA owes Caliber.

Third, CNA has provided no authority to justify delaying this case while awaiting a ruling in a separate action—to which CNA is not even a party—in a different court, nor could it. This Court has authority to manage its docket and schedule a case management conference.

In short, the Court should reject CNA's attempt to delay this litigation. Caliber respectfully requests that the Court promptly set this matter for a Rule 16 Management Conference.

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Respectfully submitted,

/s/ Latosha M. Ellis

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on August 16, 2024.

/s/ Melissa R. Smith

Melissa R. Smith